



October 8, 2009

Honorable Lawrence Bliss, Senate Chair
Honorable Charles R. Priest, House Chair
Joint standing Committee on Judiciary
100 State House Station
Augusta, Maine 04330-0100

Dear Senator Bliss, Representative Priest, and Members of the Joint standing Committee on Judiciary:

Thank you for the opportunity to present these comments with respect to Public Law 2009, chapter 230 (LD 1183), *An Act to Prevent Predatory Marketing Practices against Minors*. We appreciate the opportunity to outline our concerns with respect to this law and the unintended consequences for health insurance plans.

As enacted, P.L. 2009, c. 230 severely inhibits the ability of health insurance carriers, third-party administrators ("TPAs") and pharmacy benefit managers ("PBMs") to administer health insurance benefits and to engage in care management activities.

Generally speaking, the newly enacted 10 M.R.S.A. § 9552 prohibits the collection, receipt, or transfer of health related or personal information from a minor without receiving verifiable parental consent from a parent or guardian. In addition, the new 10 M.R.S.A. § 9553 prohibits the use of health-related information for the purpose of marketing a product or service to the minor or to promote any course of action for the minor relating to the product.

These provisions severely limit the ability of a health insurer to process health care claims and to provide many of the services we offer to our members including care management services (including advising our members how to best manage chronic conditions such as asthma and diabetes), recommending more cost effective prescription medications, and other such services. Although such communications are generally directed to the parents or guardians, not the minors themselves, that may not always be the case. Furthermore, the prohibition on promoting a course of action for a minor prohibits communications directed to the parent or guardian, as well as to the minor.

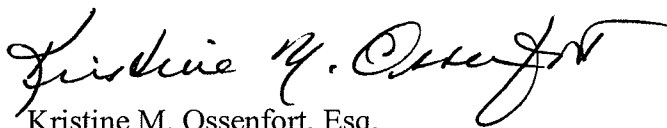
In addition, health insurance carriers, TPAs and PBMs are already subject to extensive regulations with respect to the use of personal health information such as the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Insurance Information and

Privacy Protection Act (Title 24-A M.R.S.A. §§2201-2220). In addition, the Maine Insurance Code contains a Trade Practices Act (24-A M.R.S.A. § 2151, et seq.), enforced by the Superintendent of Insurance. As a result, health insurance carriers have been exempted from Maine's Unfair Trade Practices Act¹ and the Uniform Deceptive Trade Practices Act.

In order to avoid unintended consequences such as those described above, we would suggest that any legislation on this issue mirror existing exemptions under the Unfair Trade Practices Act and Unfair and Deceptive Trade Practices Acts and exclude those activities and functions permitted by HIPAA and Maine Insurance Code's Insurance Privacy Protection Act.

Thank you for the opportunity to share these comments and I would be happy to answer any questions that the Committee might have.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristine M. Ossenfort". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Kristine M. Ossenfort, Esq.
Director, Government Relations

¹ 5 M.R.S.A. §§ 205-A-214; exemption found in 5 M.R.S.A. § 208; and 10 M.R.S.A. §§ 1211-1216, exemption found in 10 M.R.S.A. § 1214.